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November 15, 2023

Honorable Cathy Seibel
United States District Judge
Southern District of New York
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: Herman, et al. v. Town of Cortlandt, et al.,
18 CIV 2440 (CS)

Your Honor:

On October 30, 2023, the Court granted permission for the plaintiffs to file a motion addressing the measure of damages they are entitled to at trial and what admissible evidence they intend to put forth in support of their claim by November 6, 2023. (See Docket 256). They offered the Court one excuse after another and finally filed it on November 14, 2023. The scheduled return date was November 13, 2023. As such, the Defendants respectfully request that the Court accept its reply beyond the due date.

The Court had also granted the Defendants permission to file a cross-motion seeking dismissal of all remaining claims asserted against Chris Kehoe in his individual capacity. (See Docket 256).

However, the Defendants had already filed a motion in limine requesting the same relief (see Docket 259); Plaintiffs opposed (see Docket 279) and Defendants replied (see Docket 281).

We did not withdraw that motion due to plaintiffs' delay in filing their motion for summary judgment.

If the Court accepts Mr. Kehoe's motion in limine for said relief, a separate cross-motion is not necessary.

Thank you for your consideration.

Respectfully,

Paul E. Svensson

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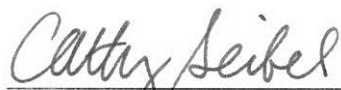
Cc: Kathleen Herman (via email and first-class mail)
Jeff Ghiazza
52 Pine Hill Road
Pleasant Valley, NY 12569

As I explained when Defendants initially suggested filing a motion *in limine* seeking to dismiss the individual capacity takings claim against Defendant Kehoe, *see* ECF No. 222 (requesting “permission to move in limine to have the takings claim dismissed as against Mr. Kehoe, in his individual capacity, prior to trial), Defendants cannot move for summary judgment under the guise of a motion *in limine*, *see* Minute Entry dated July 28, 2023; *see also Williams v. Rushmore Loan Mgmt. Servs. LLC*, No. 15-CV-673, 2017 WL 822793, at *1 (D. Conn. Mar. 2, 2017) (“A motion *in limine* is not the proper vehicle for seeking a dispositive ruling on a claim.”) (collecting cases).

Nevertheless, in the interests of narrowing the issues for trial, Defendants may have a brief extension – until Monday, November 20, 2023 – to cross-move for summary judgment on the individual capacity claim against Defendant Kehoe, in full compliance with Fed. R. Civ. P. 56 and Local Civil Rule 56.1. Plaintiffs shall then have until Monday, November 27, 2023 to respond. There shall be no reply. If Defendants fail to so move by November 20, 2023 they may make a motion concerning the individual capacity claim against Defendant Kehoe at the close of Plaintiffs’ case. *See* Fed. R. Civ. P. 50. ECF No. 259 is denied as moot and the Clerk of Court is respectfully directed to terminate that motion.

As to the timeliness of Plaintiffs’ motion for summary judgment, the Clerk of Court has informed me that the motion was timely filed and that the delay in docketing it cannot be attributed to Plaintiffs. In such circumstances, I will consider both Plaintiffs’ motion for summary judgment, *see* ECF No. 270, and Defendants’ opposition, *see* ECF Nos. 286-288, to be timely filed. Plaintiffs’ reply to Defendants’ opposition remains due on November 20, 2023. *See* ECF No. 256.

SO ORDERED.



CATHY SEIBEL, U.S.D.J.

11/16/23